

STATE OF MICHIGAN
COURT OF APPEALS

LOULA VASILODIMITRAKIS and KOSTAS
VASILODIMITRAKIS,

UNPUBLISHED
June 22, 2001

Plaintiffs-Appellants,

v

K-MART, INC.,

No. 221547
Oakland Circuit Court
LC No. 99-015006-NO

Defendant-Appellee.

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order dismissing their case with prejudice. We affirm.

On December 27, 1996, plaintiffs filed a negligence action in Oakland Circuit Court under Case No. 96-51535-NO alleging damages exceeding \$10,000. After a \$9,000 mediation recommendation, the case was remanded to district court because the amount in controversy was less than the jurisdictional limitation for circuit court. In February 1998, the district court returned the case to the circuit court after the repeal of MCL 600.641; MSA 27A.641, which had allowed circuit courts to transfer cases to district courts if it appeared that the amounts in controversy would be less than the jurisdictional limits for circuit court. The circuit court denied a motion to restore the case to the trial docket and dismissed the case without prejudice, finding that the amount in controversy was certainly less than the \$25,000 jurisdictional limit in circuit court effective January 1, 1998. Plaintiffs then filed a motion to reinstate the case or, in the alternative, transfer it to the visiting judge docket. The court denied the motion and suggested that the matter be refiled in district court.

On February 18, 1999, plaintiffs refiled their complaint in the Oakland Circuit Court, under Case No. 99-012683, once again alleging damages greater than \$10,000. The Oakland Circuit Court dismissed sua sponte plaintiffs' second complaint for lack of subject matter jurisdiction in light of the January 1, 1998, increase in the jurisdictional limit to \$25,000.

On May 29, 1999, plaintiffs refiled their complaint under Case No. 99-015006, but this time alleged that the amount in controversy exceeded \$25,000. Defendant filed its answer to the complaint along with a motion for summary disposition based upon lack of subject-matter jurisdiction. The court set aside the scheduling order regarding defendant's motion and

dismissed plaintiffs' third complaint with prejudice. In its order, the court noted the procedural history of the cases, including the transferring to and from district court and the dismissal of the two prior complaints for lack of subject-matter jurisdiction.

Plaintiffs then filed a motion for reconsideration of the order dismissing their complaint with prejudice. The trial court denied the motion, finding that it presented the same issues ruled upon and that plaintiffs failed to demonstrate a palpable error by which the court and the parties were misled.

On appeal, plaintiffs first argue that the trial court erred in dismissing the case for lack of jurisdiction based upon the 1996 mediation recommendation in one of the former cases when plaintiffs alleged more than \$25,000 in damages in the present case. Plaintiffs assert that jurisdiction depends upon the allegations, not the facts, citing *Luscombe v Shedd's Food Products Corp*, 212 Mich App 537, 541-542; 539 NW2d 210 (1995). However, plaintiffs' third complaint cannot be looked at in a vacuum. Plaintiffs' two prior complaints must be considered to the extent that all three complaints made the same allegations and arose from the same transaction involving the same parties. Plaintiffs were obviously seeking to circumvent the limitation on damages available in the district court by filing a third claim alleging an amount of damages that would allow them into circuit court. See MCL 600.8301; 27A.8301 (district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.) Accordingly, the trial court did not err in finding that it lacked subject-matter jurisdiction over the matter, *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995), and did not abuse its discretion in dismissing plaintiffs' case. *Gardner v Stodgel*, 175 Mich App 241, 251; 437 NW2d 276 (1989).

Plaintiffs also claim that the court should not have ruled on defendant's motion for summary disposition without affording plaintiffs an opportunity to respond to it. However, the court never ruled on defendant's motion. Moreover, once a court determines that it has no jurisdiction, it should not proceed further except to dismiss the action. *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965); *Eaton Co Bd of Rd Comm'rs v Schultz*, 205 Mich App 371, 375 n 2; 521 NW2d 847 (1994). Therefore, plaintiffs' claim does not provide a basis for reversal.

Finally, plaintiffs argue that the court erred in denying their motion for rehearing or reconsideration based upon their failure to raise new issues where they were never allowed an opportunity to argue in response to defendant's motion for summary disposition. The trial court did not abuse its discretion in denying plaintiffs' motion for reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). As noted above, the court never ruled on defendant's motion for summary disposition. Therefore, plaintiffs' claim that they were never allowed to respond to defendant's motion in the first place is not relevant. Moreover, based upon our resolution of the first issue, plaintiffs failed to demonstrate a palpable error by which the court and the parties have been misled and failed to show that a different disposition would result from correction of the error. MCR 2.119(F)(3).

Affirmed.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey